

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRM-A-975-2022 (O&M)

Date of Decision: 14.03.2023

Bhagwan Dass

...Appellant

Versus

Gurdass Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ajay Kamboj, Advocate for the appellant

JAGMOHAN BANSAL, J. (ORAL)

CRM-49564-2022

For the reasons mentioned in the application, the application seeking condonation of delay of 22 days in filing the appeal is allowed.

CRM stands disposed of.

CRM-49565-2022

For the reasons mentioned in the application, the application for exemption is allowed.

CRM stands disposed of.

CRM-A-975-2022

1. The appellant through instant appeal is seeking setting aside side of judgment dated 06.06.2022 whereby learned Sub-Divisional Judicial Magistrate, Dabwali has dismissed the complaint of the appellant for want of prosecution.

2. The brief facts of the case are that the appellant filed complaint dated 02.01.2019 before Magistrate at Mandi Dabwali. The

matter, from time to time, came up for consideration before the learned Trial Court. The complainant, from time to time, appeared before the Trial Court, however, on 06.06.2022, neither the counsel for the appellant nor the appellant appeared before the Trial Court which vide impugned order dated 06.06.2022 dismissed the complaint for want of prosecution.

3. Learned counsel for the appellant *inter alia* contends that mother of counsel of the appellant was ill so he could not attend the proceedings. The appellant on account of some urgent work was out of station and he attempted to contact his counsel who on account of illness of his mother could not attend the call and accordingly, neither the appellant on 06.06.2022 appeared before Trial Court nor his counsel. There was no intentional lapse which is evident from the fact that on the same day, the appellant appeared before the Trial Court and moved an application seeking re-calling of impugned order. The appellant is very much interested to pursue his complaint and there was no deliberate lapse on his part. The Magistrate has dismissed application of the appellant seeking restoration on the ground that there is no provision for restoration of the complaint dismissed for want of prosecution.

4. I have heard the arguments of learned counsel for the appellant and perused the record.

5. From the reading of the impugned order, it is evident that complaint has been dismissed for the want of prosecution. There is nothing in the impugned order indicating that appellant and his counsel

on the earlier occasions were not present. The reason assigned for non-appearance by the appellant seems to be plausible at least for the purpose of re-calling/setting aside of the impugned order. The dismissal of complaint has deprived the appellant from his substantial right to prosecute the respondents.

6. In view of afore-stated facts and circumstances, this Court is of the considered opinion that present appeal deserves to be allowed and accordingly allowed. The impugned order dated 06.06.2022 is hereby set aside. The appellant at the first instance is directed to appear before the Trial Court on 22.03.2023 and thereafter, as directed by Trial Court.

7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and Trial Court shall proceed without being prejudiced by observations of this Court.

(JAGMOHAN BANSAL)
JUDGE

14.03.2023
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No